

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
DEPARTMENT OF THE ARMY  
AND THE  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

**ARTICLE I - PURPOSE AND AUTHORITY**

This Memorandum of Agreement ("MOA") is entered into by and between the Department of the Army (DA) and the U.S. Environmental Protection Agency (EPA), Great Lakes National Program Office (GLNPO) for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA goods and services relating to the implementation of projects and studies conducted pursuant to Section 118 of the Clean Water Act. This MOA reflects the mutual desire that the DA participate as a part of a coordinated effort toward protection and restoration of the health and productivity of the Great Lakes ecosystem. This MOA is entered into pursuant to the Economy in Government Act (31 U.S.C. 1535).

**ARTICLE II - SCOPE**

Goods and services which the DA may provide under this MOA include, but are not limited to, the following:

- Assistance in the planning, development, and review of project proposals;
- Planning, design, and construction of contaminated sediment remediation projects;
- Monitoring and oversight of project construction conducted by non-Federal interests;
- Planning, design, and implementation of research studies to evaluate innovative technologies for contaminated sediment remediation at Great Lakes Areas of Concern;
- Technical expertise, engineering, and contracting assistance as requested by GLNPO;
- Participation on committees and work groups established to provide advisory assistance to GLNPO and U.S. EPA.

These goods and services are intended to assist the GLNPO in meeting its roles responsibilities, and requirements under Section 118 of the Clean Water Act. Nothing in this MOA shall be construed to require the GLNPO to use the DA or to require the DA to provide any goods or services to the GLNPO, except as may be set forth in Interagency Agreements (IAGs).

**ARTICLE III - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between the DA and the GLNPO, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as

points of contact on IAGs.

#### **ARTICLE IV – INTERAGENCY AGREEMENTS (AND IMPLEMENTING ARRANGEMENTS)**

In response to requests from the GLNPO for DA assistance under this MOA, the DA and the GLNPO shall conclude mutually agreed upon written IAGs on EPA Form 1610-1 (Rev 10-88). IAGs must include:

- a detailed scope of work statement;
- schedules;
- the amount of funds required and available to accomplish the scope of work as stated above;
- the EPA's fund citation and the date upon which the cited funds expire for obligation purposes;
- identification of individual project managers.
- identification of types of contracts to be used (if known);
- types and frequencies of reports;
- identification of which party is to be responsible for government-furnished equipment; contract administration; records maintenance; rights to data, software, and intellectual property; and contract audits;
- procedures for amending or modifying the IAG; and,
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods or services shall be provided under this MOA only after an appropriate IAG has been signed by a representative of each party authorized to execute that IAG. Upon signature by each party's representative, an IAG shall constitute a valid Economy in Government Act order. In the case of conflict between this MOA and an IAG or an implementing arrangement, this MOA shall control.

#### **ARTICLE V - RESPONSIBILITIES OF THE PARTIES**

##### **A. Responsibilities of the Department of the Army**

1. The DA shall provide the GLNPO with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in IAGs and implementing arrangements.

2. The DA shall ensure that only authorized DA representatives sign IAGs and implementing arrangements.

3. The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

4. The DA shall provide detailed periodic progress, financial and other reports to the GLNPO as agreed upon in the IAG or implementing arrangements. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

5. The DA shall inform the GLNPO of all contracts entered into under each IAG.

**B. Responsibilities of the Great Lakes National Program Office**

1. The GLNPO will retain primary responsibility for programmatic liaison with interested groups, including industry, the States, Congress, private citizens, other Federal agencies, the Canadian government, and the International Joint Commission.

2. The GLNPO shall certify, prior to the execution of each IAG under this MOA, that the IAG complies with the requirements of the Economy in Government Act.

3. As between the GLNPO and the DA and its contractors, the GLNPO shall retain any legal liability imposed on the United States for all hazardous substances and wastes associated with work under this MOA, including, but not limited to, any liability imposed under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or the Resource Conservation and Recovery Act (RCRA).

4. The GLNPO shall pay all costs associated with the DA's provisions of goods or services under this MOA and shall certify, at the time of signature of an IAG, the availability of funds necessary to accomplish that IAG.

5. The GLNPO shall ensure that only authorized GLNPO contracting officers sign IAGs.

6. The GLNPO shall draft IAGs, to include scope of work statements.

7. The GLNPO shall provide all necessary real estate interests and access to all work sites and support facilities required by the Corps, and shall perform all coordination with and obtain any permits from state and local agencies, as necessary during the execution of each IAG.

**ARTICLE VI - FUNDING**

The GLNPO shall pay all costs associated with the DA's provision of goods or services under this MOA. For IAGs for work estimated to cost more than \$250,000 total in contracts and in-house services or \$50,000 in contracts, the DA shall bill the GLNPO in advance and the GLNPO shall provide the necessary funds in advance. For IAGs for work valued at less than these amounts, the GLNPO may reimburse the DA for the goods or services. For these lesser requirements, the DA shall bill the GLNPO monthly for costs incurred, using appropriate electronic transfer methods, the GLNPO shall reimburse the DA within 30 days of receipt of billing.

If the DA forecasts its actual costs under an IAG to exceed the amount of funds available under that IAG, it shall promptly notify the GLNPO of the amount of additional funds necessary to complete the work under that IAG. The GLNPO shall either provide the additional funds to the DA, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that IAG.

Within 90 days of completing the work under an IAG, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return to the GLNPO any funds advanced in excess of the actual costs as then known, or the GLNPO shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the GLNPO's duty in accordance with Article XI to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

## **ARTICLE VII - APPLICABLE LAWS**

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

## **ARTICLE VIII - MANIFESTS AND RELATED DOCUMENTS**

DA personnel are authorized to execute all manifests and related documents, federal and state, on behalf of the GLNPO that pertain to work performed under this MOA by the DA or its contractors. DA personnel shall annotate the manifests and related documents with the phrase "On behalf of EPA." If applicable state regulations do not permit the DA to sign such documents on behalf of GLNPO, the DA shall contact the GLNPO representative for specific guidance. Upon fiscal and physical completion of work under an IAG, the DA shall forward manifests and related documents to the GLNPO. The DA shall retain contract-related documents.

## **ARTICLE IX - CONTRACT CLAIMS AND DISPUTES**

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the GLNPO of any such litigation and afford the GLNPO an opportunity to review and comment on

the litigation proceedings and any resulting settlement negotiations.

## **ARTICLE X - DISPUTE RESOLUTION**

The parties agree that, in the event of a dispute between the parties, the GLNPO and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget.

## **ARTICLE XI - RESPONSIBILITY FOR COSTS**

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, the DA will accept accountability for its actions, but the GLNPO shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the EPA have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

## **ARTICLE XII - PUBLIC INFORMATION**

Justification and explanation of the GLNPO's programs before Congress and other agencies, departments, and offices of the federal Executive Branch shall be the responsibility of the GLNPO. The DA may provide, upon request, any assistance necessary to support the GLNPO's justification or explanations of the GLNPO's programs conducted under this MOA. In general, the GLNPO is responsible for all public information regarding the GLNPO's projects. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The GLNPO or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to IAGs under this MOA.

## **ARTICLE XIII - MISCELLANEOUS**

### **A. Other Relationships or Obligations**

This MOA shall not affect any pre-existing or independent relationships or obligations between the GLNPO and the DA.

### **B. Survival**

The provisions of this MOA which require performance after the expiration or

termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability


If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

**ARTICLE XIV – AMENDMENT, MODIFICATION AND TERMINATION**

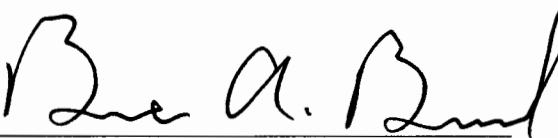
This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the GLNPO shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of closing out or transferring any on-going contracts.

**ARTICLE XVI - EFFECTIVE DATE**

This MOA shall become effective when signed by both the USEPA and the DA.

  
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**Thomas V. Skinner**  
**Great Lakes National Program**  
**Manager**  
U.S. Environmental Protection Agency

Date: JUL 21 2005

  
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**Bruce A. Berwick**  
Brigadier General, U.S. Army  
Division Engineer

Date: 11 July 05